

AMENDMENT NO. _____ Calendar No. _____

Purpose: To implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

IN THE SENATE OF THE UNITED STATES—106th Cong., 2d Sess.

S. 682

To implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. HELMS

Viz:

1 Strike out all after the enacting clause and insert the
2 following:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Intercountry Adoption Act of 2000”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—UNITED STATES CENTRAL AUTHORITY

2

- Sec. 101. Designation of central authority.
- Sec. 102. Responsibilities of the Secretary of State.
- Sec. 103. Responsibilities of the Attorney General.
- Sec. 104. Annual report on intercountry adoptions.

TITLE II—PROVISIONS RELATING TO ACCREDITATION AND
APPROVAL

- Sec. 201. Accreditation or approval required in order to provide adoption services in cases subject to the Convention.
- Sec. 202. Process for accreditation and approval; role of accrediting entities.
- Sec. 203. Standards and procedures for providing accreditation or approval.
- Sec. 204. Secretarial oversight of accreditation and approval.
- Sec. 205. State plan requirement.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE
UNITED STATES

- Sec. 301. Adoptions of children immigrating to the United States.
- Sec. 302. Immigration and Nationality Act amendments relating to children adopted from Convention countries.
- Sec. 303. Adoptions of children emigrating from the United States.

TITLE IV—ADMINISTRATION AND ENFORCEMENT

- Sec. 401. Access to Convention records.
- Sec. 402. Documents of other Convention countries.
- Sec. 403. Authorization of appropriations; collection of fees.
- Sec. 404. Enforcement.

TITLE V—GENERAL PROVISIONS

- Sec. 501. Recognition of Convention adoptions.
- Sec. 502. Special rules for certain cases.
- Sec. 503. Relationship to other laws.
- Sec. 504. No private right of action.
- Sec. 505. Effective dates; transition rule.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress recognizes—

3 (1) the international character of the Conven-
4 tion on Protection of Children and Co-operation in
5 Respect of Intercountry Adoption (done at The
6 Hague on May 29, 1993), and

7 (2) the need for uniform interpretation and im-
8 plementation of the Convention in the United States
9 and abroad,

1 and therefore finds that enactment of a Federal law gov-
2 erning adoptions and prospective adoptions subject to the
3 Convention involving United States residents is essential.

4 (b) PURPOSES.—The purposes of this Act are—

5 (1) to provide for implementation by the United
6 States of the Convention;

7 (2) to protect the rights of, and prevent abuses
8 against, children, birth families, and adoptive par-
9 ents involved in adoptions (or prospective adoptions)
10 subject to the Convention, and to ensure that such
11 adoptions are in the children’s best interests; and

12 (3) to improve the ability of the Federal Gov-
13 ernment to assist United States citizens seeking to
14 adopt children from abroad and residents of other
15 countries party to the Convention seeking to adopt
16 children from the United States.

17 **SEC. 3. DEFINITIONS.**

18 As used in this Act:

19 (1) ACCREDITED AGENCY.—The term “accred-
20 ited agency” means an agency accredited under title
21 II to provide adoption services in the United States
22 in cases subject to the Convention.

23 (2) ACCREDITING ENTITY.—The term “accred-
24 iting entity” means an entity designated under sec-

1 tion 202(a) to accredit agencies and approve persons
2 under title II.

3 (3) ADOPTION SERVICE.—The term “adoption
4 service” means—

5 (A) identifying a child for adoption and ar-
6 ranging an adoption;

7 (B) securing necessary consent to termi-
8 nation of parental rights and to adoption;

9 (C) performing a background study on a
10 child or a home study on a prospective adoptive
11 parent, and reporting on such a study;

12 (D) making determinations of the best in-
13 terests of a child and the appropriateness of
14 adoptive placement for the child;

15 (E) post-placement monitoring of a case
16 until final adoption; and

17 (F) where made necessary by disruption
18 before final adoption, assuming custody and
19 providing child care or any other social service
20 pending an alternative placement.

21 The term “providing”, with respect to an adoption
22 service, includes facilitating the provision of the
23 service.

24 (4) AGENCY.—The term “agency” means any
25 person other than an individual.

1 (5) APPROVED PERSON.—The term “approved
2 person” means a person approved under title II to
3 provide adoption services in the United States in
4 cases subject to the Convention.

5 (6) ATTORNEY GENERAL.—Except as used in
6 section 404, the term “Attorney General” means the
7 Attorney General, acting through the Commissioner
8 of Immigration and Naturalization.

9 (7) CENTRAL AUTHORITY.—The term “central
10 authority” means the entity designated as such by
11 any Convention country under Article 6(1) of the
12 Convention.

13 (8) CENTRAL AUTHORITY FUNCTION.—The
14 term “central authority function” means any duty
15 required to be carried out by a central authority
16 under the Convention.

17 (9) CONVENTION.—The term “Convention”
18 means the Convention on Protection of Children and
19 Co-operation in Respect of Intercountry Adoption,
20 done at The Hague on May 29, 1993.

21 (10) CONVENTION ADOPTION.—The term “Con-
22 vention adoption” means an adoption of a child resi-
23 dent in a foreign country party to the Convention by
24 a United States citizen, or an adoption of a child

1 resident in the United States by an individual resid-
2 ing in another Convention country.

3 (11) CONVENTION RECORD.—The term “Con-
4 vention record” means any item, collection, or
5 grouping of information contained in an electronic or
6 physical document, an electronic collection of data, a
7 photograph, an audio or video tape, or any other in-
8 formation storage medium of any type whatever that
9 contains information about a specific past, current,
10 or prospective Convention adoption (regardless of
11 whether the adoption was made final) that has been
12 preserved in accordance with section 401(a) by the
13 Secretary of State or the Attorney General.

14 (12) CONVENTION COUNTRY.—The term “Con-
15 vention country” means a country party to the Con-
16 vention.

17 (13) OTHER CONVENTION COUNTRY.—The
18 term “other Convention country” means a Conven-
19 tion country other than the United States.

20 (14) PERSON.—The term “person” shall have
21 the meaning provided in section 1 of title 1, United
22 States Code, and shall not include any agency of
23 government or tribal government entity.

24 (15) PERSON WITH AN OWNERSHIP OR CON-
25 TROL INTEREST.—The term “person with an owner-

1 ship or control interest” has the meaning given such
2 term in section 1124(a)(3) of the Social Security Act
3 (42 U.S.C. 1320a-3).

4 (16) SECRETARY.—The term “Secretary”
5 means the Secretary of State.

6 (17) STATE.—The term “State” means the 50
7 States, the District of Columbia, the Commonwealth
8 of Puerto Rico, the Commonwealth of the Northern
9 Mariana Islands, Guam, and the Virgin Islands.

10 **TITLE I—UNITED STATES** 11 **CENTRAL AUTHORITY**

12 **SEC. 101. DESIGNATION OF CENTRAL AUTHORITY.**

13 (a) IN GENERAL.—For purposes of the Convention
14 and this Act—

15 (1) the Department of State shall serve as the
16 central authority of the United States; and

17 (2) the Secretary shall serve as the head of the
18 central authority of the United States.

19 (b) PERFORMANCE OF CENTRAL AUTHORITY FUNC-
20 TIONS.—

21 (1) Except as otherwise provided in this Act,
22 the Secretary shall be responsible for the perform-
23 ance of all central authority functions for the United
24 States under the Convention and this Act.

1 (2) All personnel of the Department of State
2 performing core central authority functions in a pro-
3 fessional capacity in the Office of Children's Issues
4 shall have a strong background in consular affairs,
5 personal experience in international adoptions, or
6 professional experience in international adoptions or
7 child services.

8 (c) AUTHORITY TO ISSUE REGULATIONS.—Except as
9 otherwise provided in this Act, the Secretary may pre-
10 scribe such regulations as may be necessary to carry out
11 central authority functions on behalf of the United States.

12 **SEC. 102. RESPONSIBILITIES OF THE SECRETARY OF**
13 **STATE.**

14 (a) LIAISON RESPONSIBILITIES.—The Secretary
15 shall have responsibility for—

16 (1) liaison with the central authorities of other
17 Convention countries; and

18 (2) the coordination of activities under the Con-
19 vention by persons subject to the jurisdiction of the
20 United States.

21 (b) INFORMATION EXCHANGE.—The Secretary shall
22 be responsible for—

23 (1) providing the central authorities of other
24 Convention countries with information concerning—

1 (A) accredited agencies and approved per-
2 sons, agencies and persons whose accreditation
3 or approval has been suspended or canceled,
4 and agencies and persons who have been tempo-
5 rarily or permanently debarred from accredita-
6 tion or approval;

7 (B) Federal and State laws relevant to im-
8 plementing the Convention; and

9 (C) any other matters necessary and ap-
10 propriate for implementation of the Convention;

11 (2) providing Federal agencies, State courts,
12 and accredited agencies and approved persons with
13 an identification of Convention countries and per-
14 sons authorized to perform functions under the Con-
15 vention in each such country; and

16 (3) facilitating the transmittal of other appro-
17 priate information to, and among, central authori-
18 ties, Federal and State agencies (including State
19 courts), and accredited agencies and approved per-
20 sons.

21 (c) ACCREDITATION AND APPROVAL RESPONSIBIL-
22 ITIES.—The Secretary shall carry out the functions pre-
23 scribed by the Convention with respect to the accreditation
24 of agencies and the approval of persons to provide adop-
25 tion services in the United States in cases subject to the

1 Convention as provided in title II. Such functions may not
2 be delegated to any other Federal agency.

3 (d) ADDITIONAL RESPONSIBILITIES.—The
4 Secretary—

5 (1) shall monitor individual Convention adop-
6 tion cases involving United States citizens; and

7 (2) may facilitate interactions between such
8 citizens and officials of other Convention countries
9 on matters relating to the Convention in any case in
10 which an accredited agency or approved person is
11 unwilling or unable to provide such facilitation.

12 (e) ESTABLISHMENT OF REGISTRY.—The Secretary
13 and the Attorney General shall jointly establish a case reg-
14 istry of all adoptions involving immigration of children
15 into the United States and emigration of children from
16 the United States, regardless of whether the adoption oc-
17 curs under the Convention. Such registry shall permit
18 tracking of pending cases and retrieval of information on
19 both pending and closed cases.

20 (f) METHODS OF PERFORMING RESPONSIBILITIES.—
21 The Secretary may—

22 (1) authorize public or private entities to per-
23 form appropriate central authority functions for
24 which the Secretary is responsible, pursuant to regu-

1 lations or under agreements published in the Federal
2 Register; and

3 (2) carry out central authority functions
4 through grants to, or contracts with, any individual
5 or public or private entity, except as may be other-
6 wise specifically provided in this Act.

7 **SEC. 103. RESPONSIBILITIES OF THE ATTORNEY GENERAL.**

8 In addition to such other responsibilities as are spe-
9 cifically conferred upon the Attorney General by this Act,
10 the central authority functions specified in Article 14 of
11 the Convention (relating to the filing of applications by
12 prospective adoptive parents to the central authority of
13 their country of residence) shall be performed by the At-
14 torney General.

15 **SEC. 104. ANNUAL REPORT ON INTERCOUNTRY ADOPT-**
16 **TIONS.**

17 (a) **REPORTS REQUIRED.**—Beginning one year after
18 the date of the entry into force of the Convention for the
19 United States and each year thereafter, the Secretary, in
20 consultation with the Attorney General and other appro-
21 priate agencies, shall submit a report describing the activi-
22 ties of the central authority of the United States under
23 this Act during the preceding year to the Committee on
24 International Relations, the Committee on Ways and
25 Means, and the Committee on the Judiciary of the House

1 of Representatives and the Committee on Foreign Rela-
2 tions, the Committee on Finance, and the Committee on
3 Judiciary of the Senate.

4 (b) REPORT ELEMENTS.—Each report under sub-
5 section (a) shall set forth with respect to the year con-
6 cerned, the following:

7 (1) The number of intercountry adoptions in-
8 volving immigration to the United States, regardless
9 of whether the adoption occurred under the Conven-
10 tion, including the country from which each child
11 emigrated, the State to which each child immigrated,
12 and the country in which the adoption was finalized.

13 (2) The number of intercountry adoptions in-
14 volving emigration from the United States, regard-
15 less of whether the adoption occurred under the
16 Convention, including the country to which each
17 child immigrated and the State from which each
18 child emigrated.

19 (3) The number of Convention placements for
20 adoption in the United States that were disrupted,
21 including the country from which the child emi-
22 grated, the age of the child, the date of the place-
23 ment for adoption, the reasons for the disruption,
24 the resolution of the disruption, the agencies that
25 handled the placement for adoption, and the plans

1 for the child, and in addition, any information re-
2 garding disruption or dissolution of adoptions of
3 children from other countries received pursuant to
4 section 422(b)(14) of the Social Security Act, as
5 amended by section 205 of this Act.

6 (4) The average time required for completion of
7 a Convention adoption, set forth by country from
8 which the child emigrated.

9 (5) The current list of agencies accredited and
10 persons approved under this Act to provide adoption
11 services.

12 (6) The names of the agencies and persons tem-
13 porarily or permanently debarred under this Act,
14 and the reasons for the debarment.

15 (7) The range of adoption fees charged in con-
16 nection with Convention adoptions involving immi-
17 gration to the United States and the median of such
18 fees set forth by the country of origin.

19 (8) The range of fees charged for accreditation
20 of agencies and the approval of persons in the
21 United States engaged in providing adoption services
22 under the Convention.

1 **TITLE II—PROVISIONS RELAT-**
2 **ING TO ACCREDITATION AND**
3 **APPROVAL**

4 **SEC. 201. ACCREDITATION OR APPROVAL REQUIRED IN**
5 **ORDER TO PROVIDE ADOPTION SERVICES IN**
6 **CASES SUBJECT TO THE CONVENTION.**

7 (a) IN GENERAL.—Except as otherwise provided in
8 this title, no person may offer or provide adoption services
9 in connection with a Convention adoption in the United
10 States unless that person—

11 (1) is accredited or approved in accordance with
12 this title; or

13 (2) is providing such services through or under
14 the supervision and responsibility of an accredited
15 agency or approved person.

16 (b) EXCEPTIONS.—Subsection (a) shall not apply to
17 the following:

18 (1) BACKGROUND STUDIES AND HOME STUD-
19 IES.—The performance of a background study on a
20 child or a home study on a prospective adoptive par-
21 ent, or any report on any such study by a social
22 work professional or organization who is not pro-
23 viding any other adoption service in the case, if the
24 background or home study is approved by an accred-
25 ited agency.

1 (2) CHILD WELFARE SERVICES.—The provision
2 of a child welfare service by a person who is not pro-
3 viding any other adoption service in the case.

4 (3) LEGAL SERVICES.—The provision of legal
5 services by a person who is not providing any adop-
6 tion service in the case.

7 (4) PROSPECTIVE ADOPTIVE PARENTS ACTING
8 ON OWN BEHALF.—The conduct of a prospective
9 adoptive parent on his or her own behalf in the case,
10 to the extent not prohibited by the law of the State
11 in which the prospective adoptive parent resides.

12 **SEC. 202. PROCESS FOR ACCREDITATION AND APPROVAL;**
13 **ROLE OF ACCREDITING ENTITIES.**

14 (a) DESIGNATION OF ACCREDITING ENTITIES.—

15 (1) IN GENERAL.—The Secretary shall enter
16 into agreements with one or more qualified entities
17 under which such entities will perform the duties de-
18 scribed in subsection (b) in accordance with the Con-
19 vention, this title, and the regulations prescribed
20 under section 203, and upon entering into each such
21 agreement shall designate the qualified entity as an
22 accrediting entity.

23 (2) QUALIFIED ENTITY.—In paragraph (1), the
24 term “qualified entity” means a nonprofit private
25 entity that has expertise in developing and admin-

1 istering standards for entities providing child welfare
2 services and that meets such other criteria as the
3 Secretary may by regulation establish.

4 (b) DUTIES OF ACCREDITING ENTITIES.—The duties
5 described in this subsection are the following:

6 (1) ACCREDITATION AND APPROVAL.—Accredi-
7 tation of agencies, and approval of persons, to pro-
8 vide adoption services in the United States in cases
9 subject to the Convention.

10 (2) OVERSIGHT.—Ongoing monitoring of the
11 compliance of accredited agencies and approved per-
12 sons with applicable requirements, including review
13 of complaints against such agencies and persons in
14 accordance with procedures established by the ac-
15 crediting entity and approved by the Secretary.

16 (3) ENFORCEMENT.—Taking of adverse actions
17 (including requiring corrective action, imposing sanc-
18 tions, and refusing to renew, suspending, or can-
19 celing accreditation or approval) for noncompliance
20 with applicable requirements, and notifying the
21 agency or person against whom adverse actions are
22 taken of the deficiencies necessitating the adverse
23 action.

24 (4) DATA, RECORDS, AND REPORTS.—Collection
25 of data, maintenance of records, and reporting to

1 the Secretary, the United States central authority,
2 State courts, and other entities (including on per-
3 sons and agencies granted or denied approval or ac-
4 creditation), to the extent and in the manner that
5 the Secretary requires.

6 (c) REMEDIES FOR ADVERSE ACTION BY ACCRED-
7 ITING ENTITY.—

8 (1) CORRECTION OF DEFICIENCY.—An agency
9 or person who is the subject of an adverse action by
10 an accrediting entity may re-apply for accreditation
11 or approval (or petition for termination of the ad-
12 verse action) on demonstrating to the satisfaction of
13 the accrediting entity that the deficiencies necessi-
14 tating the adverse action have been corrected.

15 (2) NO OTHER ADMINISTRATIVE REVIEW.—An
16 adverse action by an accrediting entity shall not be
17 subject to administrative review.

18 (3) JUDICIAL REVIEW.—An agency or person
19 who is the subject of an adverse action by an accred-
20 iting entity may petition the United States district
21 court in the judicial district in which the agency is
22 located or the person resides to set aside the adverse
23 action. The court shall review the adverse action in
24 accordance with section 706 of title 5, United States
25 Code, and for purposes of such review the accred-

1 iting entity shall be considered an agency within the
2 meaning of section 701 of such title.

3 (d) FEES.—The amount of fees assessed by accred-
4 iting entities for the costs of accreditation shall be subject
5 to approval by the Secretary. Such fees may not exceed
6 the costs of accreditation. In reviewing the level of such
7 fees, the Secretary shall consider the relative size of, the
8 geographic location of, and the number of Convention
9 adoption cases managed by the agencies or persons subject
10 to accreditation or approval by the accrediting entity.

11 **SEC. 203. STANDARDS AND PROCEDURES FOR PROVIDING**
12 **ACCREDITATION OR APPROVAL.**

13 (a) IN GENERAL.—

14 (1) PROMULGATION OF REGULATIONS.—The
15 Secretary, shall, by regulation, prescribe the stand-
16 ards and procedures to be used by accrediting enti-
17 ties for the accreditation of agencies and the ap-
18 proval of persons to provide adoption services in the
19 United States in cases subject to the Convention.

20 (2) CONSIDERATION OF VIEWS.—In developing
21 such regulations, the Secretary shall consider any
22 standards or procedures developed or proposed by,
23 and the views of, individuals and entities with inter-
24 est and expertise in international adoptions and fam-
25 ily social services, including public and private enti-

1 ties with experience in licensing and accrediting
2 adoption agencies.

3 (3) APPLICABILITY OF NOTICE AND COMMENT
4 RULES.—Subsections (b), (c), and (d) of section 553
5 of title 5, United States Code, shall apply in the de-
6 velopment and issuance of regulations under this
7 section.

8 (b) MINIMUM REQUIREMENTS.—

9 (1) ACCREDITATION.—The standards pre-
10 scribed under subsection (a) shall include the re-
11 quirement that accreditation of an agency may not
12 be provided or continued under this title unless the
13 agency meets the following requirements:

14 (A) SPECIFIC REQUIREMENTS.—

15 (i) The agency provides prospective
16 adoptive parents of a child in a prospective
17 Convention adoption a copy of the medical
18 records of the child (which, to the fullest
19 extent practicable, shall include an
20 English-language translation of such
21 records) on a date which is not later than
22 the earlier of the date that is 2 weeks be-
23 fore (I) the adoption, or (II) the date on
24 which the prospective parents travel to a

1 foreign country to complete all procedures
2 in such country relating to the adoption.

3 (ii) The agency provides prospective
4 adoptive parents with a training program
5 that includes counseling and guidance for
6 the purpose of promoting a successful
7 intercountry adoption before such parents
8 travel to adopt the child or the child is
9 placed with such parents for adoption.

10 (iii) The agency employs personnel
11 providing intercountry adoption services on
12 a fee for service basis rather than on a
13 contingent fee basis.

14 (iv) The agency discloses fully its poli-
15 cies and practices, the disruption rates of
16 its placements for intercountry adoption,
17 and all fees charged by such agency for
18 intercountry adoption.

19 (B) CAPACITY TO PROVIDE ADOPTION
20 SERVICES.—The agency has, directly or through
21 arrangements with other persons, a sufficient
22 number of appropriately trained and qualified
23 personnel, sufficient financial resources, appro-
24 priate organizational structure, and appropriate
25 procedures to enable the agency to provide, in

1 accordance with this Act, all adoption services
2 in cases subject to the Convention.

3 (C) USE OF SOCIAL SERVICE PROFES-
4 SIONALS.—The agency has established proce-
5 dures designed to ensure that social service
6 functions requiring the application of clinical
7 skills and judgment are performed only by pro-
8 fessionals with appropriate qualifications and
9 credentials.

10 (D) RECORDS, REPORTS, AND INFORMA-
11 TION MATTERS.—The agency is capable of—

12 (i) maintaining such records and mak-
13 ing such reports as may be required by the
14 Secretary, the United States central au-
15 thority, and the accrediting entity that ac-
16 credits the agency;

17 (ii) cooperating with reviews, inspec-
18 tions, and audits;

19 (iii) safeguarding sensitive individual
20 information; and

21 (iv) complying with other require-
22 ments concerning information management
23 necessary to ensure compliance with the
24 Convention, this Act, and any other appli-
25 cable law.

1 (E) LIABILITY INSURANCE.—The agency
2 agrees to have in force adequate liability insur-
3 ance for professional negligence and any other
4 insurance that the Secretary considers appro-
5 priate.

6 (F) COMPLIANCE WITH APPLICABLE
7 RULES.—The agency has established adequate
8 measures to comply (and to ensure compliance
9 of their agents and clients) with the Conven-
10 tion, this Act, and any other applicable law.

11 (G) NONPROFIT ORGANIZATION WITH
12 STATE LICENSE TO PROVIDE ADOPTION SERV-
13 ICES.—The agency is a private nonprofit orga-
14 nization licensed to provide adoption services in
15 at least one State.

16 (2) APPROVAL.—The standards prescribed
17 under subsection (a) shall include the requirement
18 that a person shall not be approved under this title
19 unless the person is a private for-profit entity that
20 meets the requirements of subparagraphs (A)
21 through (F) of paragraph (1) of this subsection.

22 (3) RENEWAL OF ACCREDITATION OR AP-
23 PROVAL.—The standards prescribed under sub-
24 section (a) shall provide that the accreditation of an
25 agency or approval of a person under this title shall

1 be for a period of not less than 3 years and not
2 more than 5 years, and may be renewed on a show-
3 ing that the agency or person meets the require-
4 ments applicable to original accreditation or ap-
5 proval under this title.

6 (c) TEMPORARY REGISTRATION OF SMALL COMMU-
7 NITY BASED AGENCIES.—For a 2-year period after the
8 entry into force of the Convention and notwithstanding
9 subsection (b), the Secretary may provide, in regulations
10 issued pursuant to subsection (a), that an agency may reg-
11 ister with the Secretary and be accredited to provide adop-
12 tion services in the United States in cases subject to the
13 Convention during such period if the agency—

14 (1) is licensed in the State in which it is located
15 and is a non-profit agency;

16 (2) has been providing adoption services in con-
17 nection with intercountry adoptions for at least 5
18 years;

19 (3) has provided adoption services in fewer than
20 20 intercountry adoptions in the preceding calendar
21 year;

22 (4) has demonstrated that it will be able to pro-
23 vide the United States Government with all informa-
24 tion related to the elements described in section
25 104(b) and provides such information;

1 (5) has initiated the process of becoming ac-
2 credited under the provisions of this Act and is ac-
3 tively taking steps to become an accredited agency;
4 and

5 (6) has not been found to be involved in any
6 improper conduct relating to intercountry adoptions.

7 **SEC. 204. SECRETARIAL OVERSIGHT OF ACCREDITATION**
8 **AND APPROVAL.**

9 (a) OVERSIGHT OF ACCREDITING ENTITIES.—The
10 Secretary shall—

11 (1) monitor the performance by each accred-
12 iting entity of its duties under section 202 and its
13 compliance with the requirements of the Convention,
14 this Act, other applicable laws, and implementing
15 regulations under this Act; and

16 (2) suspend or cancel the designation of an ac-
17 crediting entity found to be substantially out of com-
18 pliance with the Convention, this Act, other applica-
19 ble laws, or implementing regulations under this Act.

20 (b) SUSPENSION OR CANCELLATION OF ACCREDITA-
21 TION OR APPROVAL.—

22 (1) SECRETARY'S AUTHORITY.—The Secretary
23 shall suspend or cancel the accreditation or approval
24 granted by an accrediting entity to an agency or per-

1 son pursuant to section 202 when the Secretary
2 finds that—

3 (A) the agency or person is substantially
4 out of compliance with applicable requirements;
5 and

6 (B) the accrediting entity has failed or re-
7 fused, after consultation with the Secretary, to
8 take appropriate enforcement action.

9 (2) CORRECTION OF DEFICIENCY.—At any time
10 when the Secretary is satisfied that the deficiencies
11 on the basis of which an adverse action is taken
12 under paragraph (1) have been corrected, the Sec-
13 retary shall—

14 (A) notify the accrediting entity that the
15 deficiencies have been corrected; and

16 (B)(i) in the case of a suspension, termi-
17 nate the suspension; or

18 (ii) in the case of a cancellation, notify the
19 agency or person that the agency or person may
20 re-apply to the accrediting entity for accredita-
21 tion or approval.

22 (c) DEBARMENT.—

23 (1) SECRETARY'S AUTHORITY.—On the initia-
24 tive of the Secretary, or on request of an accrediting
25 entity, the Secretary may temporarily or perma-

1 nently debar an agency from accreditation or a per-
2 son from approval under this title, but only if—

3 (A) there is substantial evidence that the
4 agency or person is out of compliance with ap-
5 plicable requirements; and

6 (B) there has been a pattern of serious,
7 willful, or grossly negligent failures to comply
8 or other aggravating circumstances indicating
9 that continued accreditation or approval would
10 not be in the best interests of the children and
11 families concerned.

12 (2) PERIOD OF DEBARMENT.—The Secretary's
13 debarment order shall state whether the debarment
14 is temporary or permanent. If the debarment is tem-
15 porary, the Secretary shall specify a date, not earlier
16 than 3 years after the date of the order, on or after
17 which the agency or person may apply to the Sec-
18 retary for withdrawal of the debarment.

19 (3) EFFECT OF DEBARMENT.—An accrediting
20 entity may take into account the circumstances of
21 the debarment of an agency or person that has been
22 debarred pursuant to this subsection in considering
23 any subsequent application of the agency or person,
24 or of any other entity in which the agency or person

1 has an ownership or control interest, for accredita-
2 tion or approval under this title.

3 (d) JUDICIAL REVIEW.—A person (other than a pro-
4 spective adoptive parent), an agency, or an accrediting en-
5 tity who is the subject of a final action of suspension, can-
6 cellation, or debarment by the Secretary under this title
7 may petition the United States District Court for the Dis-
8 trict of Columbia or the United States district court in
9 the judicial district in which the person resides or the
10 agency or accrediting entity is located. The court shall re-
11 view the action in accordance with section 706 of title 5,
12 United States Code.

13 **SEC. 205. STATE PLAN REQUIREMENT.**

14 Section 422(b) of the Social Security Act (42 U.S.C.
15 622(b)) is amended—

16 (1) in paragraph (11), by striking “and” at the
17 end;

18 (2) in paragraph (12), by striking “children.”
19 and inserting “children;”; and

20 (3) by adding at the end the following new
21 paragraphs:

22 “(13) contain a description of the activities that
23 the State has undertaken for children adopted from
24 other countries, including the provision of adoption
25 and post-adoption services; and

1 “(14) provide that the State shall collect and
2 report information on children who are adopted from
3 other countries and who enter into State custody as
4 a result of the disruption of a placement for adop-
5 tion or the dissolution of an adoption, including the
6 number of children, the agencies who handled the
7 placement or adoption, the plans for the child, and
8 the reasons for the disruption or dissolution.”.

9 **TITLE III—RECOGNITION OF**
10 **CONVENTION ADOPTIONS IN**
11 **THE UNITED STATES**

12 **SEC. 301. ADOPTIONS OF CHILDREN IMMIGRATING TO THE**
13 **UNITED STATES.**

14 (a) LEGAL EFFECT OF CERTIFICATES ISSUED BY
15 THE SECRETARY OF STATE.—

16 (1) ISSUANCE OF CERTIFICATES BY THE SEC-
17 RETARY OF STATE.—The Secretary of State shall,
18 with respect to each Convention adoption, issue a
19 certificate to the adoptive citizen parent domiciled in
20 the United States that the adoption has been grant-
21 ed or, in the case of a prospective adoptive citizen
22 parent, that legal custody of the child has been
23 granted to the citizen parent for purposes of emigra-
24 tion and adoption, pursuant to the Convention and
25 this Act, if the Secretary of State—

1 (A) receives appropriate notification from
2 the central authority of such child's country of
3 origin; and

4 (B) has verified that the requirements of
5 this Act have been met with respect to the
6 adoption.

7 (2) LEGAL EFFECT OF CERTIFICATES.—If ap-
8 pended to an original adoption decree, the certificate
9 described in paragraph (1) shall be treated by Fed-
10 eral and State agencies, courts, and other public and
11 private persons and entities as conclusive evidence of
12 the facts certified therein and shall constitute the
13 certification required by section 204(d)(2) of the Im-
14 migration and Nationality Act, as amended by this
15 Act.

16 (b) LEGAL EFFECT OF CONVENTION ADOPTION FI-
17 NALIZED IN ANOTHER CONVENTION COUNTRY.—A final
18 adoption in another Convention country, certified by the
19 Secretary of State pursuant to subsection (a) of this sec-
20 tion or section 303(c), shall be recognized as a final valid
21 adoption for purposes of all Federal, State, and local laws
22 of the United States.

23 (c) CONDITION ON FINALIZATION OF CONVENTION
24 ADOPTION BY STATE COURT.—In the case of a child who
25 has entered the United States from another Convention

1 country for the purpose of adoption, an order declaring
2 the adoption final shall not be entered unless the Secretary
3 of State has issued the certificate provided for in sub-
4 section (a) with respect to the adoption.

5 **SEC. 302. IMMIGRATION AND NATIONALITY ACT AMEND-**
6 **MENTS RELATING TO CHILDREN ADOPTED**
7 **FROM CONVENTION COUNTRIES.**

8 (a) DEFINITION OF CHILD.—Section 101(b)(1) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1101(b)(1)) is amended—

11 (1) by striking “or” at the end of subparagraph
12 (E);

13 (2) by striking the period at the end of sub-
14 paragraph (F) and inserting “; or”; and

15 (3) by adding after subparagraph (F) the fol-
16 lowing new subparagraph:

17 “(G) a child, under the age of sixteen at the
18 time a petition is filed on the child’s behalf to accord
19 a classification as an immediate relative under sec-
20 tion 201(b), who has been adopted in a foreign state
21 that is a party to the Convention on Protection of
22 Children and Co-operation in Respect of Inter-
23 country Adoption done at The Hague on May 29,
24 1993, or who is emigrating from such a foreign state
25 to be adopted in the United States, by a United

1 States citizen and spouse jointly, or by an unmarried
2 United States citizen at least twenty-five years of
3 age—

4 “(i) if—

5 “(I) the Attorney General is satisfied
6 that proper care will be furnished the child
7 if admitted to the United States;

8 “(II) the child’s natural parents (or
9 parent, in the case of a child who has one
10 sole or surviving parent because of the
11 death or disappearance of, abandonment or
12 desertion by, the other parent), or other
13 persons or institutions that retain legal
14 custody of the child, have freely given their
15 written irrevocable consent to the termi-
16 nation of their legal relationship with the
17 child, and to the child’s emigration and
18 adoption;

19 “(III) the child is not the grandchild,
20 niece, nephew, brother, sister, aunt, uncle,
21 or first cousin of one or both of the adopt-
22 ing parents, unless—

23 “(aa) the child has no living par-
24 ents because of the death or dis-
25 appearance of, abandonment or deser-

1 tion by, separation from, or loss of,
2 both parents; or

3 “(bb) the sole or surviving parent
4 is incapable of providing the proper
5 care for the child and has in writing
6 irrevocably released the child for emi-
7 gration and adoption; and

8 “(IV) in the case of a child who has
9 not been adopted—

10 “(aa) the competent authority of
11 the foreign state has approved the
12 child’s emigration to the United
13 States for the purpose of adoption by
14 the prospective adoptive parent or
15 parents; and

16 “(bb) the prospective adoptive
17 parent or parents has or have com-
18 plied with any pre-adoption require-
19 ments of the child’s proposed resi-
20 dence; and

21 “(ii) except that no natural parent or prior
22 adoptive parent of any such child shall there-
23 after, by virtue of such parentage, be accorded
24 any right, privilege, or status under this Act.”.

1 (b) APPROVAL OF PETITIONS.—Section 204(d) of the
2 Immigration and Nationality Act (8 U.S.C. 1154(d)) is
3 amended—

4 (1) by striking “(d)” and inserting “(d)(1)”;

5 (2) by striking “section 101(b)(1)(F)” and in-
6 serting “subparagraph (F) or (G) of section
7 101(b)(1)”;

8 (3) by adding at the end the following new
9 paragraph:

10 “(2) Notwithstanding the provisions of subsections
11 (a) and (b), no petition may be approved on behalf of a
12 child defined in section 101(b)(1)(G) unless the Secretary
13 of State has certified that the central authority of the
14 child’s country of origin has notified the United States
15 central authority under the convention referred to in such
16 section 101(b)(1)(G) that a United States citizen habit-
17 ually resident in the United States has effected final adop-
18 tion of the child, or has been granted custody of the child
19 for the purpose of emigration and adoption, in accordance
20 with such convention and the Intercountry Adoption Act
21 of 2000.”.

22 (c) DEFINITION OF PARENT.—Section 101(b)(2) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1101(b)(2)) is amended by inserting “and paragraph
25 (1)(G)(i)” after “second proviso therein”).

1 **SEC. 303. ADOPTIONS OF CHILDREN EMIGRATING FROM**
2 **THE UNITED STATES.**

3 (a) DUTIES OF ACCREDITED AGENCY OR APPROVED
4 PERSON.—In the case of a Convention adoption involving
5 the emigration of a child residing in the United States
6 to a foreign country, the accredited agency or approved
7 person providing adoption services, or the prospective
8 adoptive parent or parents acting on their own behalf (if
9 permitted by the laws of such other Convention country
10 in which they reside and the laws of the State in which
11 the child resides), shall do the following:

12 (1) Ensure that, in accordance with the
13 Convention—

14 (A) a background study on the child is
15 completed;

16 (B) the accredited agency or approved
17 person—

18 (i) has made reasonable efforts to ac-
19 tively recruit and make a diligent search
20 for prospective adoptive parents to adopt
21 the child in the United States; and

22 (ii) despite such efforts, has not been
23 able to place the child for adoption in the
24 United States in a timely manner; and

1 (C) a determination is made that place-
2 ment with the prospective adoptive parent or
3 parents is in the best interests of the child.

4 (2) Furnish to the State court with jurisdiction
5 over the case—

6 (A) documentation of the matters de-
7 scribed in paragraph (1);

8 (B) a background report (home study) on
9 the prospective adoptive parent or parents (in-
10 cluding a criminal background check) prepared
11 in accordance with the laws of the receiving
12 country; and

13 (C) a declaration by the central authority
14 (or other competent authority) of such other
15 Convention country—

16 (i) that the child will be permitted to
17 enter and reside permanently, or on the
18 same basis as the adopting parent, in the
19 receiving country; and

20 (ii) that the central authority (or
21 other competent authority) of such other
22 Convention country consents to the adop-
23 tion, if such consent is necessary under the
24 laws of such country for the adoption to
25 become final.

1 (3) Furnish to the United States central
2 authority—

3 (A) official copies of State court orders
4 certifying the final adoption or grant of custody
5 for the purpose of adoption;

6 (B) the information and documents de-
7 scribed in paragraph (2), to the extent required
8 by the United States central authority; and

9 (C) any other information concerning the
10 case required by the United States central au-
11 thority to perform the functions specified in
12 subsection (c) or otherwise to carry out the du-
13 ties of the United States central authority
14 under the Convention.

15 (b) CONDITIONS ON STATE COURT ORDERS.—An
16 order declaring an adoption to be final or granting custody
17 for the purpose of adoption in a case described in sub-
18 section (a) shall not be entered unless the court—

19 (1) has received and verified to the extent the
20 court may find necessary—

21 (A) the material described in subsection
22 (a)(2); and

23 (B) satisfactory evidence that the require-
24 ments of Articles 4 and 15 through 21 of the
25 Convention have been met; and

1 (2) has determined that the adoptive placement
2 is in the best interests of the child.

3 (c) DUTIES OF THE SECRETARY OF STATE.—In a
4 case described in subsection (a), the Secretary, on receipt
5 and verification as necessary of the material and informa-
6 tion described in subsection (a)(3), shall issue, as applica-
7 ble, an official certification that the child has been adopted
8 or a declaration that custody for purposes of adoption has
9 been granted, in accordance with the Convention and this
10 Act.

11 (d) FILING WITH REGISTRY REGARDING NON-
12 CONVENTION ADOPTIONS.—Accredited agencies, approved
13 persons, and other persons, including governmental au-
14 thorities, providing adoption services in an intercountry
15 adoption not subject to the Convention that involves the
16 emigration of a child from the United States shall file in-
17 formation required by regulations jointly issued by the At-
18 torney General and the Secretary of State for purposes
19 of implementing section 102(e).

20 **TITLE IV—ADMINISTRATION** 21 **AND ENFORCEMENT**

22 **SEC. 401. ACCESS TO CONVENTION RECORDS.**

23 (a) PRESERVATION OF CONVENTION RECORDS.—

24 (1) IN GENERAL.—Not later than 180 days
25 after the date of the enactment of this Act, the Sec-

1 retary, in consultation with the Attorney General,
2 shall issue regulations that establish procedures and
3 requirements in accordance with the Convention and
4 this section for the preservation of Convention
5 records.

6 (2) APPLICABILITY OF NOTICE AND COMMENT
7 RULES.—Subsections (b), (c), and (d) of section 553
8 of title 5, United States Code, shall apply in the de-
9 velopment and issuance of regulations under this
10 section.

11 (b) ACCESS TO CONVENTION RECORDS.—

12 (1) PROHIBITION.—Except as provided in para-
13 graph (2), the Secretary or the Attorney General
14 may disclose a Convention record, and access to
15 such a record may be provided in whole or in part,
16 only if such record is maintained under the authority
17 of the Immigration and Nationality Act and disclo-
18 sure of, or access to, such record is permitted or re-
19 quired by applicable Federal law.

20 (2) EXCEPTION FOR ADMINISTRATION OF THE
21 CONVENTION.—A Convention record may be dis-
22 closed, and access to such a record may be provided,
23 in whole or in part, among the Secretary, the Attor-
24 ney General, central authorities, accredited agencies,

1 and approved persons, only to the extent necessary
2 to administer the Convention or this Act.

3 (3) PENALTIES FOR UNLAWFUL DISCLOSURE.—
4 Unlawful disclosure of all or part of a Convention
5 record shall be punishable in accordance with appli-
6 cable Federal law.

7 (c) ACCESS TO NON-CONVENTION RECORDS.—Dis-
8 closure of, access to, and penalties for unlawful disclosure
9 of, adoption records that are not Convention records, in-
10 cluding records of adoption proceedings conducted in the
11 United States, shall be governed by applicable State law.

12 **SEC. 402. DOCUMENTS OF OTHER CONVENTION COUN-**
13 **TRIES.**

14 Documents originating in any other Convention coun-
15 try and related to a Convention adoption case shall require
16 no authentication in order to be admissible in any Federal,
17 State, or local court in the United States, unless a specific
18 and supported claim is made that the documents are false,
19 have been altered, or are otherwise unreliable.

20 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS; COLLEC-**
21 **TION OF FEES.**

22 (a) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—There are authorized to be
24 appropriated such sums as may be necessary to

1 agencies of the Federal Government implementing
2 the Convention and the provisions of this Act.

3 (2) AVAILABILITY OF FUNDS.—Amounts appro-
4 priated pursuant to paragraph (1) are authorized to
5 remain available until expended.

6 (b) ASSESSMENT OF FEES.—

7 (1) The Secretary may charge a fee for new or
8 enhanced services that will be undertaken by the De-
9 partment of State to meet the requirements of this
10 Act with respect to intercountry adoptions under the
11 Convention and comparable services with respect to
12 other intercountry adoptions. Such fee shall be pre-
13 scribed by regulation and shall not exceed the cost
14 of such services.

15 (2) Fees collected under paragraph (1) shall be
16 retained and deposited as an offsetting collection to
17 any Department of State appropriation to recover
18 the costs of providing such services.

19 (3) Fees authorized under this section shall be
20 available for obligation only to the extent and in the
21 amount provided in advance in appropriations Acts.

22 (c) RESTRICTION.—No funds collected under the au-
23 thority of this section may be made available to an accred-
24 iting entity to carry out the purposes of this Act.

1 **SEC. 404. ENFORCEMENT.**

2 (a) CIVIL PENALTIES.—Any person who—

3 (1) violates section 201;

4 (2) makes a false or fraudulent statement or
5 misrepresentation of material fact, or offers, gives,
6 solicits, or accepts inducement by way of compensa-
7 tion intended to influence or affect in the United
8 States or a foreign country—

9 (A) a decision by an accrediting entity with
10 respect to the accreditation of an agency or ap-
11 proval of a person under title II;

12 (B) the relinquishment of parental rights
13 or the giving of parental consent relating to the
14 adoption of a child in a case subject to the Con-
15 vention; or

16 (C) a decision or action of any entity per-
17 forming a central authority function; or

18 (3) engages another person as an agent, wheth-
19 er in the United States or in a foreign country, who
20 in the course of that agency takes any of the actions
21 described in paragraph (1) or (2),

22 shall be subject, in addition to any other penalty that may
23 be prescribed by law, to a civil money penalty of not more
24 than \$50,000 for a first violation, and not more than
25 \$100,000 for each succeeding violation.

26 (b) CIVIL ENFORCEMENT.—

1 (1) AUTHORITY OF ATTORNEY GENERAL.—The
2 Attorney General may bring a civil action to enforce
3 subsection (a) against any person in any United
4 States district court.

5 (2) FACTORS TO BE CONSIDERED IN IMPOSING
6 PENALTIES.—In imposing penalties the court shall
7 consider the gravity of the violation, the degree of
8 culpability of the defendant, and any history of prior
9 violations by the defendant.

10 (c) CRIMINAL PENALTIES.—Whoever knowingly and
11 willfully violates paragraph (1) or (2) of subsection (a)
12 shall be subject to a fine of not more than \$250,000, im-
13 prisonment for not more than 5 years, or both.

14 **TITLE V—GENERAL PROVISIONS**

15 **SEC. 501. RECOGNITION OF CONVENTION ADOPTIONS.**

16 Subject to Article 24 of the Convention, adoptions
17 concluded between two other Convention countries that
18 meet the requirements of Article 23 of the Convention and
19 that became final before the date of entry into force of
20 the Convention for the United States shall be recognized
21 thereafter in the United States and given full effect. Such
22 recognition shall include the specific effects described in
23 Article 26 of the Convention.

1 **SEC. 502. SPECIAL RULES FOR CERTAIN CASES.**

2 (a) **AUTHORITY TO ESTABLISH ALTERNATIVE PRO-**
3 **CEDURES FOR ADOPTION OF CHILDREN BY RELATIVES.—**
4 To the extent consistent with the Convention, the Sec-
5 retary may establish by regulation alternative procedures
6 for the adoption of children by individuals related to them
7 by blood, marriage, or adoption, in cases subject to the
8 Convention.

9 (b) **WAIVER AUTHORITY.—**

10 (1) **IN GENERAL.—**Notwithstanding any other
11 provision of this Act, to the extent consistent with
12 the Convention, the Secretary may, on a case-by-
13 case basis, waive applicable requirements of this Act
14 or regulations issued under this Act, in the interests
15 of justice or to prevent grave physical harm to the
16 child.

17 (2) **NONDELEGATION.—**The authority provided
18 by paragraph (1) may not be delegated.

19 **SEC. 503. RELATIONSHIP TO OTHER LAWS.**

20 (a) **PREEMPTION OF INCONSISTENT STATE LAW.—**
21 The Convention and this Act shall not be construed to pre-
22 empt any provision of the law of any State or political
23 subdivision thereof, or prevent a State or political subdivi-
24 sion thereof from enacting any provision of law with re-
25 spect to the subject matter of the Convention or this Act,
26 except to the extent that such provision of State law is

1 inconsistent with the Convention or this Act, and then
2 only to the extent of the inconsistency.

3 (b) APPLICABILITY OF THE INDIAN CHILD WELFARE
4 ACT.—The Convention and this Act shall not be construed
5 to affect the application of the Indian Child Welfare Act
6 of 1978 (25 U.S.C. 1901 et seq.).

7 (c) RELATIONSHIP TO OTHER LAWS.—Sections
8 3506(c), 3507, and 3512 of title 44, United States Code,
9 shall not apply to information collection for purposes of
10 sections 104, 202(b)(4), and 303(d) of this Act or for use
11 as a Convention record as defined in this Act.

12 **SEC. 504. NO PRIVATE RIGHT OF ACTION.**

13 The Convention and this Act shall not be construed
14 to create a private right of action to seek administrative
15 or judicial relief, except to the extent expressly provided
16 in this Act.

17 **SEC. 505. EFFECTIVE DATES; TRANSITION RULE.**

18 (a) EFFECTIVE DATES.—

19 (1) PROVISIONS EFFECTIVE UPON ENACT-
20 MENT.—Sections 2, 3, 101 through 103, 202
21 through 205, 401(a), 403, 503, and 505(a) shall
22 take effect on the date of the enactment of this Act.

23 (2) PROVISIONS EFFECTIVE UPON THE ENTRY
24 INTO FORCE OF THE CONVENTION.—Subject to sub-
25 section (b), the provisions of this Act not specified

1 in paragraph (1) shall take effect upon the entry
2 into force of the Convention for the United States
3 pursuant to Article 46(2)(a) of the Convention.

4 (b) TRANSITION RULE.—The Convention and this
5 Act shall not apply—

6 (1) in the case of a child immigrating to the
7 United States, if the application for advance proc-
8 essing of an orphan petition or petition to classify an
9 orphan as an immediate relative for the child is filed
10 before the effective date described in subsection
11 (a)(2); or

12 (2) in the case of a child emigrating from the
13 United States, if the prospective adoptive parents of
14 the child initiated the adoption process in their
15 country of residence with the filing of an appropriate
16 application before the effective date described in
17 subsection (a)(2).